March 29, 2007

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: State of Nevada

Date of Filing: August 22, 2006

Case Number: TFA-0173

This Decision concerns an Appeal that was filed by the State of Nevada in response to a determination that was issued to it by the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM). In that determination, OCRWM replied to a request for documents that Nevada submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. OCRWM released certain documents to Nevada, but withheld others either in whole or in part. This Appeal, if granted, would require that we remand this matter to OCRWM for another search and for the release of the withheld material.

The FOIA generally requires that documents held by federal agencies be released to the public on request. However, Congress has provided nine exemptions to the FOIA that set forth the types of information that agencies are not required to release. 5 U.S.C. § 552(b)(1)-(9); see also 10 C.F.R. § 1004.10(b)(1)-(9).

I. Background

In its original FOIA request, Nevada sought access to all Employee Concerns Program (ECP) documents concerning the Yucca Mountain Project (YMP), including, but not limited to,

1. Reports or complaints made by employees pursuant to the ECP of either DOE or its contractors and subcontractors at YMP;

2. All correspondence among or between DOE and any contractor or subcontractor or employee of any of them, regarding any ECP complaint or report;

3. All reports of, transcripts of, or summaries of any witness interview created in connection with any report or complaint made pursuant to the ECP of DOE or a contractor or subcontractor of DOE;

4. All investigation reports prepared by DOE or its contractors or subcontractors reporting or containing the results and/or findings and/or recommendations with respect to any ECP report or complaint made at YMP; and

5. All documents recording corrective actions taken by DOE or its contractors or subcontractors to minimize, correct, or prevent the recurrence of any situation which precipitated a valid concern.

At the request of OCRWM, Nevada later narrowed the scope of its request. Specifically, Nevada agreed to seek only documents generated during the period from January 1, 1995 to May 6, 2005 concerning "everything material to DOE's site characterization of the Yucca Mountain site, its scientific analysis of the viability of that site and the waste container, its calculations, modeling, and preparation of documentary materials, such as AMRs, Technical Basis Reports, and KTI analyses and responses, and the License Application and all its component parts and supporting materials and any safety concerns." OCRWM's July 19, 2006 Determination Letter, *citing* Nevada's June 10, 2005 letter to OCRWM.

In response to this revised request, OCRWM searched its ECP files and identified 1,662 pages of responsive documents. Of this material, OCRWM released 297 pages in their entirety and 158 pages with exempt material withheld. In its Determination Letter, OCRWM divided the responsive documents into two categories: documents created or collected by the DOE as part of its ECP that are received and maintained as confidential and identify a "protected person" (*i.e.*, a person reporting a concern or allegation, a person interviewed during the course of investigating a concern or allegation, or a person against whom a concern or allegation is made); and documents that do not identify protected persons.

OCRWM withheld all of the documents in the first category in their entirety under FOIA Exemptions 5 and 6 (5 U.S.C. § 552(b)(5) and (b)(6)), taking the position that segregation and release of any non-exempt material was not required under the relevant case law. Determination Letter at 2-3. In the alternative, OCRWM argued that any non-exempt material in these documents is "inextricably intertwined" with exempt material and would consist only of meaningless words and phrases, and therefore need not be released. Determination Letter at 3-4. This category includes 1,207 of the 1,662 pages of responsive documents. *Id.* at 4.

The balance of the responsive material consists generally of documents that do not identify protected persons. *Id.* Of these documents, OCRWM determined that four "Safety Conscious Work Environment Surveys" were exempt from mandatory disclosure in their entirety under Exemptions 4 and 5. Specifically, OCRWM concluded that the survey questions were "of a business proprietary nature," and therefore exempt pursuant to Exemption 4. They claimed that the responses to the questions "are meaningless, numerical data" that are useless without knowing the questions, and that the analysis of the answers is exempt from mandatory disclosure under Exemption 5. These four documents were therefore withheld in their entirety. Finally, OCRWM stated that another document, while apparently found in the ECP files, was in fact the property of the Nuclear Regulatory Commission (NRC), and that Nevada should request that document from the NRC.

In its Appeal, Nevada contests the adequacy of the search that was performed and OCRWM's application of Exemptions 4, 5 and 6. In addition, Nevada argues that OCRWM's identification of the NRC document is so vague as to be useless in requesting the document from the NRC.

II. Analysis

A. Adequacy of the Search

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (December 13, 1995) (Case No. VFA-0098). The FOIA, however, requires that a search be reasonable, not exhaustive. "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984).

In its Appeal, Nevada claims that there are a large number of agency documents that OCRWM has failed to locate or identify as responsive. In support of this contention, Nevada points out that in OCRWM's "Concerns Program Guide," staff Concerns Analysts are instructed to create a chronological log for each concern received "in which all events and communications pertinent to the concern are recorded with the date of the occurrence and the author of the information." Appeal at 4 (quoting the Concerns Program Guide). In addition, the Guide describes specific documents that are anticipated to be created during the process of handling an employee concern, including a "concern statement," created at the time of receipt of the concern, a "concern investigation plan," documentation of each interview conducted during the investigation, an investigation report, and a "concern response letter" for transmittal to the concerned individual. Consequently, Nevada contends that each of these documents should exist for every employee concern received. Nevada further contends that "in a PowerPoint presentation given by OCRWM Concerns Program Manager Nancy Voltura on July 31, 2002, she reported that the Concerns Program received 263 concerns during 2001" and 47 more during the first half of 2002. Appeal at 6. Based on these figures, Nevada estimates that the number of concerns that should have been received during the ten year period covered by its revised FOIA request "is well in excess of" one thousand. *Id.* Given the number of documents for each concern that are described in the Guide, Nevada suggests that a much greater volume than the 1,662 pages of documents identified as responsive in OCRWM's Determination Letter should have been located.

On November 15, 2006, OCRWM filed its response to Nevada's Appeal. In this Response, OCRWM proposes to provide Nevada with a copy of a log listing all of the concerns covered by Nevada's FOIA request. From this log, Nevada would then select specific files for production by OCRWM, subject to any applicable FOIA exemptions. OCRWM Response at 1. OCRWM has provided us with several pages of the listing of concerns that it proposes to provide to Nevada. Based on the submissions of OCRWM and Nevada, we believe that there is a substantial likelihood that the procedure suggested by OCRWM will result in the identification of additional responsive

documents. We will therefore remand this matter to OCRWM for implementation of the procedure described above.

B. Exemption 4

Exemption 4 exempts from mandatory public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4); 10 C.F.R. § 1004.10(b)(4). In its Determination Letter, OCRWM found that the questions set forth in the four Safety Conscious Work Environment Surveys that were identified as responsive "are protected by copyright held by International Survey Research LLC," and the answers to those questions, without the questions themselves, would be nothing but "meaningless numerical data." Determination Letter at 5. OCRWM therefore withheld all of this material under Exemption 4. However, in its Response, OCRWM states that upon further review, it "discovered that [the surveys] were marked as copyrighted, but because they were prepared for the government's use they should not have been marked as such." OCRWM therefore proposes that it release these documents to Nevada after the redaction of any material that is subject to any other FOIA exemption. We agree. Therefore, on remand OCRWM will review the four surveys and the answers to those surveys and release them to Nevada unless it determines that the material is subject to some other FOIA exemption.

C. Exemption 5

Exemption 5 of the FOIA exempts from mandatory disclosure documents which are "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5); 10 C.F.R. § 1004.10(b)(5). The Supreme Court has held that this provision exempts "those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975) (*Sears)*. The courts have identified three traditional privileges that fall under this definition of exclusion: the attorney-client privilege, the attorney work-product privilege, and the executive "deliberative process" or "pre-decisional" privilege. *Coastal States Gas Corporation v. Department of Energy*, 617 F.2d 854, 862 (D.C. Cir. 1980) (*Coastal States*). However, it is clear that these are not the only privileges recognized under Exemption 5. The U.S. Supreme Court has concluded that the coverage of this Exemption is quite broad, encompassing both statutory privileges and those commonly recognized by case law. *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 800 (1984). Accordingly, the District of Columbia Circuit Court of Appeals, our judicial overseer, has stated that the statutory language "unequivocally" incorporates "all civil discovery rules into" Exemption 5. *Martin v. Office of Special Counsel, Merit Systems Protection Board*, 819 F.2d 1181, 1184 (D.C. Cir. 1987) (*Martin*).

In its Determination Letter, OCRWM concluded that the ECP documents that identify protected persons are exempt from mandatory disclosure in their entirety pursuant to the discovery privilege recognized by the District of Columbia Circuit Court of Appeals in *Machin v. Zukert*, 316 F.2d 336 (1963) (hereinafter referred to as "the *Machin* privilege"). In that case, the court found that

confidential statements made to personnel investigating the crash of a United States Air Force plane were not subject to discovery in a lawsuit filed against the manufacturer of the aircraft. In addition, OCRWM cites the language of Exemption 5 and states that the documents that identify protected persons are documents that Nevada "could not discover in litigation with the" DOE, and therefore may be withheld in their entirety under that Exemption.

The "litigation" referred to by OCRWM is an administrative proceeding before the Nuclear Regulatory Commission (NRC) concerning the DOE's efforts to establish a nuclear waste repository at Yucca Mountain in Nevada. In order to decide questions arising during the period of time prior to the DOE's filing of a license application with the NRC, including the dissemination of relevant documents to the prospective parties and other interested persons, the NRC formed a Pre-License Application Presiding Officer (PAPO) Board. The PAPO Board determined that information identifying protected persons could be withheld by the DOE during the current stage of the proceeding. OCRWM contends that, under the PAPO Board's determination, ECP documents from which identifying information is redacted are also not available, except "upon a special showing of need and subject to the terms of a protective order." Determination Letter at 3. [1] OCRWM then cites *Martin* for the proposition that documents subject to such a qualified privilege are fully exempt from mandatory disclosure under the FOIA.

In its Appeal, Nevada claims that Exemption 5 is completely inapplicable to the ECP documents in question because they are not subject to any cognizable discovery privilege. Specifically, the state contends that *Machin* is inapplicable because the information in that case is different from that contained in the ECP documents. Moreover, Nevada argues that the PAPO Board decision cannot be used as a basis for invoking Exemption 5 because the Board did not find any type of privilege to be applicable to the ECP documents.

At the outset, it is clear that the documents in question meet the "inter-agency or intra-agency" threshold of the exemption. Some of these documents are communications between DOE employees relating to employee concerns, and are therefore plainly intra-agency memorandums or letters. Others include employee concerns and witness statements from contractor employees. However, the federal courts have held that some documents generated outside of an agency but created through agency initiative may be considered "inter-agency or intra-agency memorandums or letters" for purposes of Exemption 5. In *Ryan v. Department of Justice*, 617 F.2d 781 (D.C. Cir. 1980), the Court said that "Congress apparently did not intend 'inter agency or intra-agency' to be rigidly exclusive terms, but rather to include [nearly any record] that is part of the deliberative process." *Id.* at 790. This can include witness statements from contractor employees. *See Hertzberg v. Veneman*, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003). The ECP documents that originated outside of the DOE were created in response to the DOE's initiative that contractor employees should feel free to raise

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1/ Nevada disagrees, contending that in order to obtain the redacted documents, "nothing more than an email request by a party to the DOE is required." Appeal at 10.

safety and employment-related concerns without fear of retaliation. The ECP documents are "inter-agency or intra-agency memorandums or letters" within the meaning of Exemption 5.

Next, we must determine whether the documents are of a type that is "normally privileged in the civil discovery context," *Sears*, 421 U.S. at 149. For the reasons that follow, we conclude that the documents are subject to the *Machin* privilege, but that the PAPO Board proceeding did not create a civil discovery privilege that is cognizable for Exemption 5 purposes.

In *Machin*, a party involved in civil litigation against a third party attempted to obtain from the U.S. Air Force a report concerning the crash of an Air Force plane. This Aircraft Accident Investigative Report set forth the results of the Air Force's investigation of the crash, including witness statements and mechanics' reports. The purpose of the Report was to determine the likely cause of the crash, with the ultimate goal of improving the safety of Air Force operations. Witnesses were interviewed with promises that their statements would remain confidential. *Machin*, 316 F.2d at 339. In *United States v. Weber Aircraft Corp.*, 465 U.S. 792 (1984) (*Weber*), the Supreme Court held that documents subject to the *Machin* privilege are shielded from mandatory release pursuant to Exemption 5. That case also involved efforts to obtain, this time through the FOIA, a report of a safety investigation following an airplane crash. As in *Machin*, witnesses were assured of confidentiality.

The ECP documents are sufficiently similar to those at issue in these two cases to warrant protection under the *Machin* privilege. The Employee Concerns personnel conduct investigations into allegations, like the investigations in *Machin* and *Weber*, for the "purpose of taking corrective action in the interest of accident prevention." *Weber*, 465 U.S. at 795. Moreover, like the investigative programs in *Weber* and *Machin*, the promises of confidentiality given to complainants and witnesses are critical to the effectiveness of the investigations. As the Court stated in *Machin*, "We agree . . . that when disclosure of investigative reports obtained in large part through promises of confidentiality would hamper the efficient operation of an important Government program . . ., the reports should be considered privileged." The Court then went on to narrow the scope of the privilege, stating that it applied to the "testimony of private parties who participated in the investigation," and "any conclusions that might be based in any fashion on such privileged information." 316 F.2d at 339. The ECP witness interviews and the Concerns themselves are the functional equivalent of the "testimony of private parties who participated in the investigation" mentioned in *Machin*. Accordingly, OCRWM correctly withheld these documents in their entirety under Exemption 5, along with any conclusions based on that material.

We reach a different conclusion, however, regarding OCRWM's contention that the PAPO Board's treatment of these ECP documents creates a recognizable discovery privilege for purposes of Exemption 5.

In support of its position, OCRWM argues that in *Weber, Martin* and other cases, the federal courts have repeatedly stated that the FOIA should not be construed as allowing a requester to use the Act as a supplement to civil discovery. *See, e.g., Weber*, 465 U.S. at 804; *Martin*, 819 F.2d at 1186. However, these cases have uniformly referred to discovery privileges created by, or recognized in, duly-constituted courts of law. None of them speaks authoritatively to the issue of whether the order of an administrative body, like the PAPO Board, restricting the dissemination of documents can form an appropriate basis for withholding those documents under Exemption 5.

The federal courts have held, however, that a protective order issued by an administrative law judge in a federal agency's administrative proceedings does not prohibit the agency from disclosing records under the FOIA. *See, e.g., General Electric Company v. NRC*, 750 F.2d 1394, 1396, 1400 (7th Cir. 1984). Moreover, it must be noted that federal courts do not uniformly recognize even other judicial entities' privileges in the context of FOIA. For example, privileges extended by a state court do not necessarily fall within the purview of Exemption 5. *See Sneirson v. Chemical Bank*, 108 F.R.D. 159, 162 (D. Del. 1985) (The mere fact that a particular privilege has been recognized by state law will not necessarily mean that it will be recognized by a federal court). Finally, Exemption 5, like all FOIA exemptions, is to be narrowly construed. *Church of Scientology of California v. Department of the Army*, 611 F.2d 738, 742 (9th Cir. 1980) (*citing Bristol-Myers Co. v. FTC*, 424 F.2d 935 (D.C. Cir. 1970)). *See also State of Nevada*, 29 DOE ¶ 80,216 (Case No. TFA-0098) (May 23, 2005). Given these considerations, we do not believe that the PAPO Board's order forms a sufficient basis for withholding documents under Exemption 5. Therefore, on remand OCRWM will review the ECP documents for releasability in light of our determinations regarding the *Machin* privilege and the PAPO Board's order.

D. Exemption 6

Exemption 6 of the FOIA protects from disclosure "[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6); 10 C.F.R. § 1004.10(b)(6). The purpose of Exemption 6 is to "protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Department of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982) (*Washington Post*).

In order to determine whether a document may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be compromised by the disclosure of the record. If no privacy interest is identified, the document may not be withheld pursuant to Exemption 6. *Ripskis v. Department of Housing and Urban Development*, 746 F.2d 1, 3 (D.C. Cir. 1984) (*Ripskis*). Second, the agency must determine whether release of the document would further the public interest by shedding light on the operations and activities of the Government. *See Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989) (*Reporters Committee*). Third, the agency must balance the identified privacy interests against the public interest in order to determine whether release of the

document would constitute a clearly unwarranted invasion of personal privacy under Exemption 6. *See generally Ripskis,* 746 F.2d at 3.

In its Appeal, Nevada claims that the ECP documents are not part of "personnel and medical files and similar files," and are therefore not protected from mandatory disclosure by Exemption 6. In the alternative, Nevada claims that the disclosure of the fact that someone filed a concern would not constitute a clearly unwarranted invasion of that person's privacy.

The Supreme Court addressed the scope of this Exemption in *Washington Post.* The Court stated that the protection of an individual's privacy "surely was not intended to turn upon the label of the file which contains the damaging information." 456 U.S. at 601. Rather, the Court made clear that all information that "applies to a particular individual" meets the threshold requirement for Exemption 6 protection. *Id.* at 602. *See also Mary Fields Jarvis,* 26 DOE ¶ 80,190 (May 29, 1997) (Case No. VFA-0292).

Much of the information in the ECP documents applies to "particular individual[s]." It includes descriptions of various conditions relating to their employment and the very fact of their participation in the Employee Concerns Program. Nevada correctly points out that the disclosure of the fact that someone filed a concern may not, in and of itself, constitute a clearly unwarranted invasion of that person's privacy. However, when that disclosure could lead to harassment, embarrassment, intimidation or retaliation against an ECP participant, the information may be withheld under Exemption 6 unless release would further the public interest in learning about the operations of the government, and this interest outweighs the privacy interest involved. *See, e.g., Kevin D. Leary,* 29 DOE ¶ 80,235 (November 18, 2005) (Case No. TFA-0118); *William H. Payne,* 26 DOE ¶ 80,161 (February 20, 1997) (Case No. VFA-0262).

We have examined a sampling of the withheld material, and we find that significant privacy interests would be compromised by releasing information identifying protected persons. Some of these concerns allege inappropriate or unsafe behavior by individuals or organizations. Releasing the identities of the people who filed these concerns could subject them to harassment, retaliation or intimidation. Witnesses interviewed during the investigation of these concerns could face similar adverse consequences. Finally, identification of the subjects of these allegations could lead to undue embarrassment and unjustified damage to their personal and professional reputations.

In contrast to the substantial privacy interests involved, we find the public interest in release of material identifying protected persons to be negligible. This is because release of this information would shed little or no light on the operations of government, especially in light of the voluminous amount of information that DOE is to make available about the YMP through the NRC's Licensing Support Network. In short, Nevada has not suggested, nor can we discern, any useful purpose that would be served by disclosure of material identifying protected persons.

It is therefore clear that the public interest in disclosure is outweighed by the privacy interests of the sources and subjects of these Concerns, and the witnesses interviewed during the ensuing investigations. In fact, we conclude that the public is best served by maintaining the confidentiality of these individuals. Future employees might be reluctant to raise safety or efficiency-related concerns if they knew that their identities would be subject to routine disclosure. Moreover, investigations of these concerns would be hampered if witnesses could not be assured of confidentiality. Release of information identifying protected persons would therefore result in a clearly unwarranted invasion of personal privacy within the meaning of Exemption 6.

E. Segregability of Non-Exempt Material

As we have previously stated, the Employee Concerns and the witness interviews are subject to the *Machin* privilege and shielded from mandatory disclosure in their entirety under Exemption 5. However, the withheld material includes other documents that contain exempt and non-exempt material. The mere fact that documents contain material that is exempt from mandatory release under the FOIA does not necessarily mean that those documents can be withheld in their entirety. The FOIA requires that "any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt . . . ." 5 U.S.C. § 552(b); *See also Greg Long*, 25 DOE ¶ 80,129 (August 15, 1995) (Case No. VFA-0060). OCRWM contends that under *Machin*, the ECP documents that identify protected persons are exempt from mandatory disclosure in their entirety, and may therefore be completely withheld. [2]

We do not believe that *Machin* supports such a result. In its opinion, the District of Columbia Circuit Court of Appeals said that "the parties . . . have treated the investigative report as a unit that should either be entirely disclosed or entirely suppressed . . . however, it appears to us that certain portions of the report could be revealed without in any way jeopardizing the future success of Air Force accident investigations." The Court was specifically referring to the factual findings of Air Force mechanics. 316 F.2d at 339-40. This conclusion is consistent with our holdings in previous cases that factual material is generally not exempt from mandatory disclosure under Exemption 5 and must be released unless it is "inextricably intertwined" with exempt material such that release of the factual material would expose or cause harm to the agency's deliberations. *Soucie v. David*, 448 F.2d 1067, 1077 (D.C. Cir. 1971). The fact that information in the ECP documents that identify protected persons is subject to the *Machin* privilege does not relieve OCRWM of its obligation to segregate and release any non-exempt material from those documents.

In the alternative, OCRWM contends that any non-exempt material is, in fact, inextricably intertwined with exempt material. From the sampling of withheld material that we have examined,

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2/ OCRWM also cites the PAPO Board's document access order as support for this position. However, as previously stated, we do not believe that this order adequately justifies the withholding of documents under FOIA.

however, it appears that certain factual material could be released without causing harm to the interests that are protected by Exemptions 5 and 6. For example, in "Investigation Report No. 04-024," the following material could be released without revealing the identities of, or personal information about, protected persons: (i) the first two sentences of the first full paragraph on page three; and (ii) the first and third sentences of the second paragraph on page 4, including the "bullets" with the sub-headings "1.1" and "1.2." From Appendix 3 with the heading "Office of Civilian Radioactive Waste Management Non-Investigative Resolution Form," OCP Number 04-072, the eighth and ninth sentences of the shaded section with the heading "Method of resolving the CI's Issue" could also be released, as could an article authored by John H. Sass of the U.S. Geological Survey entitled "Thermal Tracking of Water Flow Under Yucca Mountain," an attached map paginated as "OECP46-12," and attached charts paginated as "OECP46-13" and "OECP46-14."

F. Conclusion

For the reasons set forth above, we will remand this matter to OCRWM. On remand, OCRWM should implement the procedure described in section II.A of this decision to identify additional responsive documents, release the four surveys that it withheld under Exemption 4 unless it determines that they should be withheld in whole or in part under another Exemption, and conduct a new review of the withheld material for any non-exempt material that can be released to Nevada.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the State of Nevada, OHA Case Number TFA-0173, is hereby granted as set forth in paragraph (2) below, and is in all other respects denied.

(2) This matter is hereby remanded to the Office of Civilian Radioactive Waste Management for further action consistent with this Decision.

(3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz

Senior FOIA Official

Office of Hearings and Appeals

Date: March 29, 2007